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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FD 36497

D&I RAILROAD COMPANY  
— ACQUISITION AND OPERATION EXEMPTION —  
IN LINCOLN AND UNION COUNTIES, SD, AND  
LYON, SIOUX AND PLYMOUTH COUNTIES, IA

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**PETITION FOR WAIVER  
OF 49 C.F.R. § 1150.42(e)**

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Dated: March 15, 2021

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D&I Railroad Company (“D&I”) hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the requirements of 49 C.F.R. § 1150.42(e) in connection with the transaction that is the subject of the above-captioned class exemption.

As detailed in the concurrently-filed class exemption notice filed in this proceeding, the subject transaction involves D&I’s purchase of, and continued common carrier operation over, roughly 68 miles of trackage owned by the State of South Dakota, acting by and through its Department of Transportation (“SDDOT”).<sup>1</sup> The track is commonly referred to as the Sioux Valley Line. D&I’s annual revenue exceeds \$5 million, as stated in the subject Notice of Exemption.

The Board’s rules provide that when the annual revenue of the acquiring Class III carrier, such as D&I, exceeds – or as a consequence of the transaction before the Board would exceed – \$5 million, that Class III carrier, when seeking Board authorization to undertake a given transaction, must arrange to post advance notice of the transaction (the “Labor Notice”) at the workplace of the transferor railroad’s employees on the affected lines, and serve the Labor

<sup>1</sup> D&I is the only entity with employees on the lines that are the subject of this proceeding.

Notice on the national office of each labor union representing the transferor carrier's affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver of the Labor Notice requirement, a notice of exemption involving a transaction qualifying for a class exemption will not become effective until 60 days after the Class III acquirer has certified to the Board its compliance with the foregoing posting and advance notice requirements. *Id.*

The purpose of the Labor Notice is to permit – (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waivers of the notice requirement in appropriate circumstances. *Id.* at 601.

The Board customarily has waived the 60-day notice requirement where the transaction at issue extends a prior Board-authorized arrangement or would not otherwise displace other railroad workers on the subject lines, the effect of which would be to continue the operational and rail labor *status quo*. *See, e.g., Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company*, FD 34904 (STB served Jul. 24, 2006) (“*DMV&W*”). The waiver request must be “reasonable.” *See Portland and Western Railroad – Lease and Operation Exemption – Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in *DMV&W*, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the renewal of an existing railroad line lease, observing that, “Here, no [Soo Line] employees will be affected because no [Soo Line] employees are currently working on the lines and no [Soo Line] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W*, slip op. at 2.

In the instant matter, the proposed transaction maintains the operational *status quo* in effect for well over 30 years. Neither the SDDOT, nor the current lessee of the lines at issue, the Sioux Valley Regional Railroad Authority (“SVRRA”), has any railroad operating employees on the Sioux Valley Line (and never has), and, accordingly, no SDDOT or SVRRA jobs will be “abolished or relocated as a result of the proposed transaction.” *DMV&W*, slip op. at 2. Moreover, D&I is currently operating the Sioux Valley line under a sublease with SVRRA and the proposed transaction would have no impact on D&I’s longstanding operations over the Sioux Valley Line upon D&I employees. Consequently, a waiver of the 60-day notice requirements at 49 C.F.R. § 1150.42(e) is reasonable and consistent with Board precedent. *Wisconsin & Southern R., L.L.C. — Acquisition and Operation Exemption — Soo Line R. Company*, FD 36452 (STB served Dec. 14, 2020), 3; *Arkansas-Oklahoma Railroad Company — Lease and Operation Exemption including Interchange Commitment — Union Pacific Railroad Company*, FD 36411 (STB served Jul. 31, 2020), 2; *Hainesport Industrial Railroad — Lease and Operation Exemption — Hainesport Secondary, LLC*, FD 36185 (STB served Jul. 3, 2018), 3.

WHEREFORE, D&I respectfully requests for purposes of the current class exemption proceeding that the Board waive the application of Section 1150.42(e)’s 60-day advance notice requirement in keeping with longstanding (and ever-expanding) applicable agency precedent, with a decision affective as of the effective date of the notice of exemption that is the subject of this proceeding.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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